



## **Montana Fish, Wildlife & Parks**

4600 Giant Springs Rd.  
Great Falls, MT 59405  
August 5, 2016

To whom it may concern:

Montana Fish, Wildlife, & Parks (MFWP) is proposing to purchase a perpetual conservation easement (CE) on Mark Machler's property near Roy, MT. The Machler property consists of 2,700 acres of unbroken sagebrush-grassland habitat bisected by Blood Creek (Exhibit A). As a first step in the environmental review process, MFWP is conducting public scoping. The Department invites the public to identify any issues and concerns related to this CE proposal. MFWP will then prepare an Environmental Assessment (EA) and invite further public comment before recommending a final decision to the Fish and Wildlife Commission.

### Background and Authority

With the passage of Senate Bill 230 during the 2015 Legislature, MFWP is required to conduct public scoping for certain land projects. The new public scoping language in MCA 87-1-218 reads as follows: "For all land acquisitions of 640 acres or more proposed pursuant to 87-1-209, the department shall: (a) conduct a public scoping process to identify issues and concerns as the initial phase of an environmental review pursuant to Title 75, chapter 1, part 2; (b) provide the public with sufficient notice of the proposed acquisition and an opportunity to provide input on reasonable alternatives, mitigation alternatives, mitigation measures, issues, and potential impacts to be addressed in the environmental review; and (c) respond to comments received during the public scoping process as part of the environmental review document." Consistent with this new law, MFWP has released this scoping notice, which is also posted on the Department's web site and area news outlets.

MFWP has the authority under law (MCA 87-1-201) to protect, enhance and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed House Bill (HB) 526, the Habitat Montana Program, which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee title acquisition (MCA 87-1-241 and 242). Habitat Montana recognizes that certain native plant communities constituting wildlife habitat are worthy of perpetual conservation. Those communities include intermountain grasslands, shrub grasslands and riparian corridors. The Machler property includes shrub grasslands and riparian corridors, warranting conservation considerations. If the project is completed, MFWP would hold and monitor the CE. Further details of the proposed easement follow.

### Proposal

The proposed CE encompasses ~2,700 deeded acres in one parcel, approximately 2 miles north of Roy, MT on Mabec Road in hunting district 417. The property is completely overlapped by Greater Sage Grouse Core Area, and has 9 active sage grouse leks within 4 miles of its boundaries. Mr. Machler is interested in selling a CE to MFWP to forever conserve this wildlife habitat, and provide

an opportunity for a long-time lessee to purchase his property at a reduced cost, as encumbered by the CE, thereby also maintaining traditional agricultural practices on this property.

#### Overview of property resources

The Machler property is primarily characterized as “lowland/prairie grassland and sagebrush steppe,” and “sagebrush-dominated shrubland,” two terrestrial ecotypes considered of greatest conservation need. It also falls completely within MFWP’s Region 4 Sage Grouse Core Area Focal Area as identified by the 2015 State Wildlife Action Plan. Due to its proximity to active leks, the complete lack of sodbusting on the property, and the riparian habitat offered by Blood Creek, the area provides good nesting, brood-rearing, and winter habitat for sage grouse. The area also contains productive sharp-tailed grouse, mule deer, and pronghorn habitat. Baird’s Sparrow, Sprague’s Pipit, Long-billed Curlew, and Brewer’s Sparrow are other Species of Concern (in addition to Greater Sage-Grouse) with potential distribution on this property. The Machler property also adjoins three DNRC state sections previously inaccessible to the public; compared with acreages of other blocks of accessible public lands in this area, a CE on the Machler property would represent a relatively large block of ground to support and provide sagebrush conservation and outdoor recreation, providing public access where relatively little exists.

#### Overview on conservation easements

Specific terms of the easement would be contained in a legal document, which is the "Deed of Conservation Easement". This document lists MFWP and Landowner rights under terms of the easement as well as restrictions on Landowner activities. The rights of both parties and restrictions on Landowner activities would be negotiated with and agreed upon by MFWP and the Landowner. Below is a summary of the terms that are typical of sagebrush grassland CEs. The Draft EA will propose the terms specific to this particular easement.

#### Typical conservation easement terms

MFWP's rights may include the right to:

- (1) identify, preserve and enhance specific habitats and conservation values of the Land;
- (2) upon prior notice to the landowners, enter upon and inspect the Land;
- (3) monitor, enforce and prevent activities inconsistent with purpose of the easement; and
- (4) provide hunting, trapping, wildlife viewing (recreational access) for the general public.

Landowner’s retained rights may include the right to:

- (1) graze livestock within a described grazing system;
- (2) cultivate and farm grain fields and/or hay land (only that which currently exists);
- (3) provide regulated public use of the Land at all times;
- (4) develop and maintain water resources, including springs, on the Land necessary for farming, grazing and wildlife purposes that are allowed by the easement;
- (5) repair, renovate, improve or remove existing structures;
- (6) repair, renovate or improve existing service roads;
- (7) construct, remove, repair and/or replace fences for grazing livestock;
- (8) maintain, renovate, repair or replace utilities existing on the Land at the time of the grant of this easement;
- (9) use agrichemical, biological, and/or mechanical means for the control of noxious weeds;
- (10) right to maintain, renovate, repair, or replace utility structures existing on the Land as long as they are consistent with the purposes of the conservation easement and will not significantly impact the conservation values of the Land (with prior approval);
- (11) limited construction of residences within a defined building area as determined by MFWP;

- (12) maintain, restore and/or improve fish and wildlife habitat (subject to prior approval);
- (13) grant, sell, exchange devise, gift, convey, transfer or dispose of all of Landowner's right, title, estate, and interest in the land in one parcel only.

Restrictions placed upon Landowner activities may include:

- (1) no removal, control or manipulation by any means of shrub and tree species that could be browsed and utilized by wildlife except in routine clearing for roads, trails, structures and fences;
- (2) no subdivision;
- (3) no cultivation or farming beyond what is described or currently exists;
- (4) adherence to a described grazing plan outlined in the Management Plan;
- (5) no outfitting or fee hunting;
- (6) exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials by any mining method that disturbs the surface of the Land is prohibited; in addition, the exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials below the surface of the Land by any sub-surface mining method that would significantly impair or interfere with the conservation values of the Land is prohibited.
- (7) no commercial feed lots;
- (8) no game farms or alternative livestock farms;
- (9) no waste, refuse or hazardous material dumping;
- (10) no commercial or industrial use except traditional agricultural use;
- (11) draining, filling, dredging, leveling, burning, ditching, diking or reclamation of any natural or manmade wetland or riparian area is prohibited;
- (12) Landowners shall use their best efforts to assure the retention of any and all water rights currently in use and will not transfer, encumber, sell, lease or otherwise separate such rights from the Land or allow them to be lost or abandoned due to nonuse or for any other reason without prior approval from Grantee;
- (13) granting of right-of-way or easements for utilities, roadways, natural gas lines, or other purposes are prohibited without prior approval from the Grantee; and
- (14) construction of facilities for the development and utilization of renewable energy resources, including, wind and solar for use principally on the Land by the Landowners is provided.

#### Development of a management plan

In addition to the Deed of CE, MFWP would develop a Management Plan that documents strategies for land management in which MFWP and the Landowner would be cooperating to ensure consistency with the terms and intent of the CE.

#### Opportunities for public involvement

Formal public participation specific to MFWP's proposed purchase of this CE begins with this scoping process. Public scoping comments will help in the development of a Draft Environmental Assessment (EA) which will be available for 30 day public review likely Fall 2016. The Draft EA further explains how MFWP's proposed expenditure for this CE would help facilitate protection of the property's wildlife and agricultural values. Availability of the EA will be advertised in the local area, and through statewide media via FWP's website at [www.fwp.mt.gov](http://www.fwp.mt.gov) – Public Notices. Also during the EA process, a public hearing will be held in Fergus County to inform the public on the proposal. After reviewing public input received through the EA, MFWP's Region 4 Supervisor will decide upon a Preferred Alternative. A recommendation will then be provided to the Fish and Wildlife Commission. The Fish and Wildlife Commission will be asked to render a final decision on this proposal at one of their regularly scheduled meetings. The Montana State Board of Land

Commissioners will provide ultimate approval/disapproval on the proposal.

Montana Fish, Wildlife & Parks is requesting public input and comments (scoping) on the proposed project from August 10 – September 10, 2016. If you have any written comments regarding the proposed project, please mail them to Montana Fish, Wildlife & Parks, c/o Machler Conservation Easement Proposal, PO Box 938, Lewistown, MT 59457. Or, email comments to [sandersen@mt.gov](mailto:sandersen@mt.gov) Attn: Machler Conservation Easement Proposal.

If you have any questions regarding the proposed project, please call Sonja Andersen at (406) 538-4658 (Lewistown-Area Wildlife Biologist) or send an e-mail to the address listed above.

Thanks for your time and consideration of this proposed CE project.

Sincerely,



Gary Bertellotti  
Region 4 Supervisor

**Exhibit A. Proposed Machler Property Conservation Easement.**

